

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B04

PLR-100061-13

Date:

May 10, 2013

In Re:

Legend:

Husband =

Wife =

Daughter =

State =

Trust 1 =

Trust 2 =

Trustee =

Date 1 =

Date 2 =

Dear :

This letter responds to your letter dated October 4, 2012, requesting a ruling that Trust 1's transfer to Trust 2 of a life insurance policy insuring the lives of Husband and Wife will not constitute a "transfer for valuable consideration" under § 101(a)(2) of the Internal Revenue Code (the Code), or in the alternative, will fall within the exceptions under § 101(a)(2)(B), and therefore, will not affect the application of § 101(a)(1) to policy proceeds that the beneficiary will receive under the policy. Additional information was submitted in your March 28, 2013 letter.

FACTS

On Date 1, Husband (or the Taxpayer) and Wife created Trust 1. On or about Date 2, Trust 1 purchased a joint and survivor policy insuring the lives Husband and Wife (the Policy). The trustee of Trust 1 is Husband's nephew, Trustee. The beneficiaries of Trust 1 are Husband and Wife's four children, including Daughter. Pursuant to the terms of Trust 1, upon the death of the survivor of Husband and Wife, the corpus of the trust is to be distributed outright and free of trust to the beneficiaries.

After the creation of Trust 1, Daughter was diagnosed with a disability that has severely limited her ability to manage her affairs. Following this diagnosis, Husband wishes to establish a second irrevocable trust, Trust 2. Trust 2 will have the same beneficiaries as Trust 1 and the same trustee as Trust 1. The pivotal difference between Trust 1 and Trust 2 will be that Trust 2 is a perpetual trust and contains a Special Needs provision for the share established for Daughter. Husband represents that Trust 2 is a grantor trust wholly owned by Husband for federal income tax purposes.

Husband and Wife established a partnership under State law and hold a % interest each in the partnership. Husband and Wife own several investment properties as partners. The Partnership has not elected to be treated as an association taxable as a corporation under § 301.7701-3(b) of the Procedure and Administration Regulations.

Trust 2 intends to purchase the Policy from Trust 1 for the value of Trust 1's interest in the Policy, as determined under § 25.2512-6(a) of the Gift Tax Regulations. Husband will obtain from the issuing insurance company the interpolated terminal reserve value of the Policy as of the date of sale plus the gross premium last paid before the date of sale, which covers the period extending beyond the date of sale. Upon the transfer of the Policy to Trust 2, Trust 2 will become the beneficiary of the Policy. Husband will make annual gifts to Trust 2, which will be utilized in part to pay the premiums on the Policy.

LAW AND ANALYSIS

Section 101(a)(1) of the Code provides that, except as otherwise provided in §§ 101(a)(2), 101(d), and 101(f), gross income does not include amounts received under a life insurance contract if such amounts are paid by reason of the death of the insured.

Section 101(a)(2) of the Code provides, generally, if a life insurance contract, or any interest therein is transferred for valuable consideration, the exclusion from gross income provided by § 101(a)(1) is limited to an amount equal to the sum of the actual value of the consideration and the premiums and other amounts subsequently paid by the transferee.

The term "transfer for valuable consideration" is defined for purposes of § 101(a)(1) in § 1.101-1(b)(4) of the Income Tax Regulations as any absolute transfer for value of a right to receive all or part of the proceeds of a life insurance policy.

An exception to the general rule of § 101(a)(2) of the Code is provided in § 101(a)(2)(B) when the contract is transferred to the insured, to a partner of the insured, to a partnership in which the insured is a partner, or to a corporation in which the insured is

a shareholder or officer. In these cases, the general rule of § 101(a)(2) will not affect the application of § 101(a)(1) to the amount received by the beneficiaries.

In the present situation, Trust 2 is a grantor trust of Husband, and thus, Husband is treated as the owner of the assets of Trust 2 for federal income tax purposes. Trust 2 plans to acquire the joint and survivor policy on the lives of Husband and Wife from Trust 1 for the value of Trust 1's interest in the Policy. Trust 2's proposed purchase of the Policy from Trust 1 will constitute a transfer of the life insurance contract for valuable consideration within the meaning of § 101(a)(2) of the Code.

However, to the extent the policy insures the life of Husband, the contemplated transfer is a transfer to the insured under § 101(a)(2)(B) of the Code because Trust 2 will own the Policy after the purchase and Husband is treated as owning all the assets of Trust 2, including the Policy. Further, to the extent the policy insures the life of Wife, that portion of the policy which insures the life of Wife is being transferred to Husband as a partner of the insured under § 101(a)(2)(B) because Husband is a partner in the Partnership in which Wife is a partner. Therefore, the proposed transfer is excepted in its entirety by § 101(a)(2)(B) from the application of the transfer for value rule of § 101(a)(2).

CONCLUSION

Based on the facts provided and the representations made, we conclude that Trust 2's proposed purchase of Trust 1's interest in the Policy on the joint lives of Husband and Wife will fall within the exceptions to the transfer for value rule provided in § 101(a)(2)(B), and therefore, will not affect the application of § 101(a)(1) to proceeds of the Policy payable to Trust 2 as the beneficiary of the Policy upon the last to die of Husband and Wife.

CAVEATS

The ruling contained in this letter is based upon information and representations submitted by the Taxpayer and accompanied by a penalties of perjury statement executed by the Taxpayer. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of the proposed transaction under any other provisions of the Code or regulations, which may be applicable thereto. No opinion is expressed or implied concerning the qualification of the Policy as a life insurance contract under § 7702 of the Code. Moreover, we express no opinions as to the treatment of the transaction for estate or gift tax purposes. No opinion is expressed or implied regarding whether the Taxpayer should be treated as the owner of any portion of Trust 1 or Trust 2 under §§ 671 through 679.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any federal tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, the original is being sent to the Taxpayer with a copy of this letter being sent to the Taxpayer's authorized representative.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110 of the Code.

Sincerely,

Sheryl B. Flum
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosure (1): Copy for § 6110 purposes

cc: